

JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-951

Decided October 28, 1982

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers NM 47145 and NM 50958.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect relict plant communities and the suitability of the West Potrillo Mountains as habitat for pronghorn antelope.

APPEARANCES: James M. Chudnow, John L. Messinger, pro sese. John H. Harrington, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for BLM.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James M. Chudnow and John L. Messinger appeal the May 12, 1982, decisions of the New Mexico State Office, Bureau of Land Management (BLM), which rejected their noncompetitive oil and gas lease offers N, 47145 and NM 50958, for land in Ts. 25, 26 S., R. 3 W., New Mexico; principal meridian, Dona Ana County, New Mexico. The land sought lies in the "no lease area" of the West Potrillo Mountains. The stated rationale for the decisions was that the lands in question are being considered as a possible habitat for pronghorn antelope and contain many relict plant communities. The basis for these conclusions was the Management Framework Plan for the Las Uvas Planning Unit, dated June 1976.

Appellants argue that the 1976 report may be out-of-date and not reflect the current status of the land. They suggest that the increasing need for reliable sources of oil and gas under domestic control should be encouraged. They contend that leases with stipulations restricting use of the surface would be better than no lease at all.

Counsel for BLM responds that the "no leasing" determination came as a result of the Bureau's planning process. The relict plant communities in the West Potrillo Mountains should be allowed to function in an undisturbed state. BLM concedes that the Management Framework Plan is partly outdated, as the area is not now being studied for designation as a primitive area, but the underlying rationale for the decision retains its validity to support the "no lease" decision. Appellants have not attacked the basic reasons for the adverse decision, so it should be affirmed.

[1] Under the provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), public lands are available for oil and gas leasing at the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a) (1976); see Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960). Accordingly, the Secretary has the authority to refuse to lease the lands for oil and gas purposes, even if the lands have not been withdrawn from operation of the mineral leasing laws. Id. However, a decision to refuse to lease land must be supported by facts of record that the refusal is required in the public interest. Tucker and Snyder Exploration Co., Inc., 51 IBLA 35 (1980). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981); Dell K. Hatch, 34 IBLA 274 (1978), and cases cited therein.

There is no question that protection of the habitat of a species of wild animal is of public interest. Placid Oil Co., 58 IBLA 294 (1981); Carol Lee Hatch, 50 IBLA 80 (1980); Jack E. Griffin, 7 IBLA 155 (1972). We believe that BLM adequately supported its decision not to lease for oil and gas in the West Potrillo Mountains. Intrusion of oil and gas activities would impinge upon the relict plant communities occurring in the area, as well as denigrate its usefulness as habitat for pronghorn antelope.

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Edward W. Stuebing
Administrative Judge

